



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2013-0443]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption, request for comments.

SUMMARY: FMCSA announces receipt of applications from 13 individuals for an exemption from the prohibition against persons with a clinical diagnosis of epilepsy or any other condition which is likely to cause a loss of consciousness or any loss of ability to operate a commercial motor vehicle (CMV) from operating CMVs in interstate commerce. The regulation and the associated advisory criteria published in the Code of Federal Regulations as the “Instructions for Performing and Recording Physical Examinations” have resulted in numerous drivers being prohibited from operating CMVs in interstate commerce based on the fact that they have had one or more seizures and are taking anti-seizure medication, rather than an individual analysis of their circumstances by a qualified medical examiner. If granted, the exemptions would enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs for 2 years in interstate commerce.

DATES: Comments must be received on or before [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2013-0443 using any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the

on-line instructions for submitting comments.

- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, S.E., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Fax: 1-202-493-2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to <http://www.regulations.gov>, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, S.E., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the Federal

Register published on January 17, 2008 (73 FR 3316; January 17, 2008). This information is also available at <http://Docketinfo.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Elaine Papp, Chief, Medical Programs Division, (202) 366-4001, or via email at fmcsamedical@dot.gov, or by letter FMCSA, Room W64-113, Department of Transportation, 1200 New Jersey Avenue, S.E., Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption for a 2-year period if it finds “such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.” The statutes also allow the Agency to renew exemptions at the end of the 2-year period. The 13 individuals listed in this notice have recently requested an exemption from the epilepsy prohibition in 49 CFR 391.41(b)(8), which applies to drivers who operate CMVs as defined in 49 CFR 390.5, in interstate commerce. Section 391.41(b)(8) states that a person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

FMCSA provides medical advisory criteria for use by medical examiners in determining whether drivers with certain medical conditions should be certified to operate CMVs in intrastate commerce. The advisory criteria indicate that if an individual has had a sudden episode of a non-epileptic seizure or loss of consciousness of unknown

cause which did not require anti-seizure medication, the decision whether that person's condition is likely to cause the loss of consciousness or loss of ability to control a CMV should be made on an individual basis by the medical examiner in consultation with the treating physician. Before certification is considered, it is suggested that a 6-month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and anti-seizure medication is not required, then the driver may be qualified.

In those individual cases where a driver had a seizure or an episode of loss of consciousness that resulted from a known medical condition (e.g., drug reaction, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), certification should be deferred until the driver has fully recovered from that condition, has no existing residual complications, and is not taking anti-seizure medication. Drivers who have a history of epilepsy/seizures, off anti-seizure medication and seizure-free for 10 years, may be qualified to operate a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a 5-year period or more.

Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your

submission. To submit your comment online, go to <http://www.regulations.gov> and in the search box insert the docket number “FMCSA-2013-0443” and click the search button.

When the new screen appears, click on the blue “Comment Now!” button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, To submit your comment online, go to <http://www.regulations.gov> and in the search box insert the docket number “FMCSA-2013-0443” and click “Search.” Next, click “Open Docket Folder” and you will find all documents and comments related to the proposed rulemaking.

SUMMARY OF APPLICATIONS

Thomas Bynum

Mr. Bynum is a 61 year-old class A CDL holder in North Carolina. He does not have a history of seizure. He takes anti-seizure medication since his surgery 35 years ago with the dosage and frequency remaining the same since that time. If granted the

exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Bynum receiving an exemption.

Brian Conaway

Mr. Conaway is a 42 year-old class B CDL holder in Ohio. He has a history of seizures and has remained seizure free and off anti-seizure medication since his surgery 1999. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Conaway receiving an exemption.

Joan Diaz

Ms. Diaz is a 49 year-old class B CDL holder in Maryland. She has a history of seizure disorder and has remained seizure free for 32 years. She takes anti-seizure medication with the dosage and frequency remaining the same for over 3 years. If granted the exemption, she would like to drive a school bus. Her physician states that he is supportive of Ms. Diaz receiving an exemption.

Christopher Fitch

Mr. Fitch is a 51 year-old class B CDL holder in New York. He has a history of seizures and his last seizure was one year ago while in the hospital. He takes anti-seizure medication with the dosage and frequency remaining the same for over 2 years. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Fitch receiving an exemption.

Ronald Hartl

Mr. Hartl is a 55 year old driver in Wisconsin. He has a history of epilepsy and has remained seizure free for 35 years. He takes anti-seizure medication with the dosage and frequency remaining the same for over 10 years. If granted the exemption, he would

like to drive a CMV. His physician states that he is supportive of Mr. Hartl receiving an exemption.

Donald Hernandez

Mr. Hernandez is a 40 year-old driver in California. He has a history of seizure disorder and has remained seizure free for 14 years. He takes anti-seizure medication with the dosage and frequency remaining the same for over 2 years. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Hernandez receiving an exemption.

Craig Hoisington

Mr. Hoisington is a 41 year-old driver in New Hampshire. He has a history of epilepsy and has remained seizure free for 10 years. He takes anti-seizure medication with the dosage and frequency remaining the same for over 2 years. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Hoisington receiving an exemption.

Earnest Lansberry

Mr. Lansberry is a 62 year-old driver in Pennsylvania. He has a history of seizure disorder and has remained seizure free for 7 years. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Lansberry receiving an exemption.

Michael Miller

Mr. Miller is a 56 year-old driver in Wisconsin. He has a history of epilepsy and has remained seizure free seizure for 11 years. He takes anti-seizure medication with the

dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Miller receiving an exemption.

Scott Smith

Mr. Smith is a 39 year-old driver in California. He has a history of seizure and has remained seizure free for 12 years. He discontinued his anti-seizure medication 18 months ago. If granted the exemption, he would like to drive a CMV. His physician is supportive of Mr. Smith receiving an exemption.

Peter Thompson

Mr. Thompson is a 21 year-old driver in Florida. He has a history of seizures and has remained seizure free for over 10 years. He discontinued his anti-seizure medication 8 years ago. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Thompson receiving an exemption.

Nathaniel Ware

Mr. Ware is a 33 year-old driver in Alabama. He has a history of seizures and has remained seizure free for 4 years. He takes anti-seizure medication with the dosage and frequency remaining the same for 2 years. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Ware receiving an exemption.

Jason Yowell

Mr. Yowell is a 42 year-old driver in Virginia. He has a history of seizures and has remained seizure free for 4 years. He discontinued his anti-seizure medication 10

months ago. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Yowell receiving an exemption.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on the exemption applications described in this notice. We will consider all comments received before the close of business on the closing date indicated earlier in the notice.

Issued on: February 26, 2014.

Larry W. Minor,
Associate Administrator for Policy.

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